

**REGULAR MEETING OF THE COMMON COUNCIL
OF THE CITY OF PLATTSBURGH, NEW YORK**

July 31, 2014

5:30 P.M.

MINUTES

Present: Mayor James Calnon, Councilors Rachelle Armstrong (W1), Mike Kelly (W2), Dale Dowdle (W3), Becky Kasper (W5), Joshua Kretser (W6)

Absent: **Councilor Paul O'Connell (W4)**

1. MINUTES OF THE PREVIOUS MEETING:

RESOLVED: That the Minutes of the regular meeting of the Common Council held on July 17, 2014 are approved and placed on file among the public records of the City Clerk's Office.

By Councilor Kasper; Seconded by Councilor Armstrong
Roll call: Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser
(All voted in the affirmative)

2. PAYROLLS OF VARIOUS DEPARTMENTS:

RESOLVED: That the payrolls of the various Departments of the City of Plattsburgh for the weeks ending July 23, 2014 in the amount of \$ 286,056.27 and July 30, 2014 in the amount of \$278,829.77 are authorized and allowed and the Mayor and the City Clerk are hereby empowered and directed to sign warrants drawn on the City Chamberlain for the payment thereof.

By Councilor Kretser; Seconded by Councilor Armstrong
Roll call: Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser
(All voted in the affirmative)

3. REPORTS OF CITY OFFICES & COMMITTEE REPORTS:

- Report of Fire and Ambulance Responses for the weeks of July 17 – July 30, 2014
- Report from the Building Inspector's office July 29, 2014
- Report of the Work Session of the Common Council held on June 26, 2014
- Report of the Work Session of the Common Council held on July 10, 2014
- Report of Public Hearing held by the Zoning Board of Appeals on July 21, 2014

RESOLVED: That the reports as listed are hereby ordered received and placed on file among the public records of the City Clerk's Office.

By Councilor Dowdle; Seconded by Councilor Kasper
Roll call: Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser

(All voted in the affirmative)

4. CORRESPONDENCE OR RECOMMENDATIONS FROM BOARDS: None

5. AUDIT OF CLAIMS:

RESOLVED: That the bills Audited by the Common Council for the weeks ending July 25, 2014 in the amount of \$ 2,504,609.27 and August 1, 2014 in the amount of \$ 302,656.58 are authorized and allowed and the Mayor and City Clerk are hereby authorized and directed to sign warrants drawn on the City Chamberlain for the payment thereof.

By Councilor Kretser; Seconded by Councilor Dowdle
Roll call: Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser
(All voted in the affirmative)

6. PERSONS ADDRESSING COUNCIL:

Andrew Golt 17 Couch Street. Asked the Building Inspector's office to visit Broad Street and some of the properties have not had the grass cut all summer long. Asked about 15 Couch Street and what is happening.

Gary Sargeant 35 Cumberland Ave. Concerns about Oil Trains coming through Plattsburgh and condition of tracks and over pass near Cliff Haven.

Jake DeSnyder Cliff Haven. Express opinion and hope about City marina or what he likes to call water front development.

John Seiden Roosevelt Terrace spoke about rail car trains. Sounds unbearable. Pursue a quiet zone designation 6pm to 6am.

7. OTHER ITEMS:

A. Motion to withdraw 7A from the Table.

By Councilor Armstrong; Seconded by Councilor Kelly

Roll call: Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser
(All voted in the affirmative)

ACTION TAKEN: Adopted

RESOLVED: In accordance with the request therefore the Common Council approves establishing and appointing members of a City of Plattsburgh Oil Train Task Force.

WHEREAS, many citizens in Plattsburgh are concerned about the new push by the fossil fuel industry to transport Bakken and Tar Sands Crude via rail throughout our region; and

WHEREAS, refineries in Albany have expanded to accommodate an even greater volume of these and other dangerous products; and

WHEREAS, New York Governor Andrew Cuomo also recognizes the risk of transporting volatile crude by rail in passing Executive Order #125 directing New York State agencies to conduct a comprehensive review of crude rail transport safety procedures and emergency response preparedness and Albany County, NY issued a moratorium on crude increases at the Port of Albany pending a public health investigation; and

WHEREAS, the last few years have seen a dramatic rise in rail crude transport nationwide, and more crude oil was spilled in U.S. rail accidents in 2013 than the preceding four decades, amounting to more than 1.15 million gallons in 2013. Most tragically in July 2013, 72 tanker cars loaded with 2 million gallons of flammable crude oil derailed in Lac-Megantic, Canada, causing explosions that killed 47 people, destroyed dozens of buildings, and caused over \$1 billion in damages; and

WHEREAS, the National Transportation Safety Board and the Pipeline and Hazardous Materials Safety Administration recently acknowledged the failure to appropriately classify the contents of crude oil shipments to reflect the hazardous and highly flammable nature of the substances being transported by rail and the devastating consequences of a crude oil rail accident including loss of life, property and environmental damage, and thus made recommendations to avoid urban areas when transporting crude, and to improve rail safety regulations for crude oil transport, including worse-case scenario emergency response plans; and

WHEREAS, increased rail crude oil traffic in the North Country corridor will lead to an increase in diesel emissions in communities along rail lines, and exposure to particulate matter from diesel engines has been linked to impaired pulmonary development in adolescents; increased cardiopulmonary mortality; measurable pulmonary inflammation; increased severity and frequency of asthma attacks, emergency room visits, and hospital admissions in children; increased rates of heart attacks and strokes in adults; increased risk of cancer; and increased asthma and lung disease in children; and

WHEREAS, crude oil, like that coming from the Bakken shale reservoir, is known to be volatile, highly flammable, and contain elevated concentrations of benzene, a potent carcinogen, and

WHEREAS, trains delivering crude oil traveling through the North Country will follow routes adjacent to Lake Champlain and various waterways, posing a serious threat to these ecosystems, and to Northern New York's agricultural irrigation and drinking water supplies; and

WHEREAS, given the record of crude-oil rail accidents in recent years, a train accident or derailment could have catastrophic effects if it occurred in any populated area; and

WHEREAS, historically, when environmental accidents do occur, oil companies spend years in litigation over damages as strategy to undercut payments to affected communities; and

WHEREAS, the cumulative impacts of crude oil train traffic through the North Country and other parts of Eastern New York, in addition to the cumulative upstream and downstream greenhouse gas impacts of these fossil fuels, should analyzed prior to the transport of any of these hazardous materials through our communities, now, therefore, be it

RESOLVED, that the Plattsburgh City Council establishes an Oil Train Task Force made up of stakeholders that represent our community's diversity in order to further research this transport of hazardous materials through our region and to recommend to the Mayor and Council actions that will safeguard and educate our citizens; and

BE IT FURTHER RESOLVED, that this Oil Train Task Force, though it will convene independently, will take no independent action, but will rather report exclusively and directly to the Mayor and Common Council.

Motion to withdraw By Councilor Armstrong

Councilor Armstrong appreciated feedback she received regarding this resolution. Feels this resolution involves more than just the City. She contacted Legislator McManus who expressed interest in forming a County task force which would be comprised of the city and town councils. And there is support from Legislator Read as well so we are going to cooperate and organize that instead of this resolution.

Mayor Calnon asked if there were any objections from the Council. There were no objections therefore the motion is withdrawn.

ACTION TAKEN: Withdrawn

Follow up Action: None

B. RESOLVED: In accordance with the request therefore the Common Council approves that SUNY Police to divert and direct one-way traffic in a westerly direction (as in past school years) on Rugar St between the Myers Building and Sanborn Ave on August 23, 2014 from 7am to 7pm.

By Councilor Kasper; Seconded by Councilor Kretser

Discussion: None

Roll call: Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

C. RESOLVED: In accordance with the request therefore the Common Council approves to adjust amounts for the Sewer Fund 2014 Budget in the WPCP Department as follows:

| | | |
|--|-----------------|-------------|
| Decrease Appropriation: BOD Dewatering Sludge | 5-58131151-4430 | \$20,900.00 |
| SS Dewatering Sludge | 5-58132151-4430 | \$34,100.00 |
| Increase Appropriation: Flow Raw Waste Pumping | 5-8130132-4334 | \$15,000.00 |

| | | |
|-----------------------|----------------|-------------|
| Flow Aeration | 5-8130135-4334 | \$10,000.00 |
| BOD Aeration | 5-8131135-4334 | \$15,000.00 |
| BOD Dewatering Sludge | 5-8131151-4334 | \$ 5,700.00 |
| SS Dewatering Sludge | 5-8132151-4334 | \$ 9,300.00 |

This request provides for a transfer within the 2014 Sewer Budget for payment of parts and Mechanical supplies for the WPCP Department in various waste processing costs centers. The transfer to the parts and mechanical supplies accounts is being made from two contract service account line items, both within the WPCP Department, to provide the funding for the under-budgeted appropriations. The transfer leaves the 2014 Sewer Fund Budget for total appropriations unchanged.

By Councilor Kretser; Seconded by Councilor Dowdle

Discussion: None

Roll call: Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

D. RESOLVED: Request from the City Chamberlain to consider approval of the sale of two properties auctioned on July 23rd, 2014, for the purpose of collecting delinquent property taxes, provided the attached auction results are acceptable to the Common Council for the transfer of these properties to their respective bidders.

By Councilor Kretser; Seconded by Councilor Kelly

Discussion: None

Roll call: Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

E. Motion to waive rule 4 for initial consideration “In accordance to the request therefore, the Mayor is authorized to execute a Settlement with Adirondack Advertising, LLC as attached.”

By Councilor Kelly; Seconded by Councilor Armstrong

Discussion: None

Roll call: Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

RESOLVED: In accordance to the request therefore, the Mayor is authorized to execute a Settlement with Adirondack Advertising, LLC as attached.

By Councilor Kelly; Seconded by Councilor Kasper

Discussion:

Councilor Kelly said he will be voting no on this particular issue. He doesn't think Plattsburgh is

getting a great deal on this.

Councilor Kretser said he looks forward to a good compromise where both Adirondack Advertising will be pleased and we'll be pleased in the best fashion that we can be.

Roll call: Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser
(All voted in the negative)

ACTION TAKEN: Defeated

Follow up Action: None

8. TRAVEL REQUEST: None

9. RESOLUTIONS FOR INITIAL CONSIDERATION:

1. In accordance to the request therefore, the Mayor is authorized to execute a Settlement with Adirondack Advertising, LLC as attached. **(Move to agenda under "Other Items" Letter E)**

10. NEW BUSINESS:

Councilor Dowdle read on the Building Inspector's report that the fence is down at 460 Margaret Street. Is this a good sign?

Mayor Calnon said no we don't believe it's a good sign. According to the owner they rented that and they are looking for their own fence to put up. The Building Inspector's office has been in touch with them frequently and Police are checking the site every shift. It's not a good situation and they are working with the landlord to get it fixed.

Councilor Dowdle is there a penalty?

Mayor Calnon said we are looking in to that as well.

11. CLOSING PUBLIC COMMENTS: None

Motion to Adjourn by Councilor Kasper; Seconded by Councilor Kelly

Roll call Councilors Armstrong, Kelly, Dowdle, Kasper, Kretser

(All voted in the affirmative)

MEETING ADJOURNED: 6:03 pm

SETTLEMENT AND ORDER

This Settlement Agreement (the "Agreement") is entered into as of March ____ 2014, between and among ADIRONDACK ADVERTISING, LLC, Plaintiff, and the CITY OF PLATTSBURGH, New York and JOSEPH MCMAHON in his capacity as BUILDING INSPECTOR FOR THE CITY OF PLATTSBURGH, New York ("City") ("Defendants"), to set forth the terms of settlement of a proceeding (1) before the U.S. District Court, Northern District of New York entitled Adirondack Advertising, LLC against City of Plattsburgh, New York and Joseph McMahon, in his capacity as building inspector for the City of Plattsburgh, New York (the "Federal Litigation") and (2) before the Supreme Court, County of Clinton, entitled Adirondack Advertising, LLC against the Zoning Board of Appeals of the City of Plattsburgh, New York (the "State Litigation");

WHEREAS, in the Federal Litigation, Plaintiff asserted claims against the Defendants under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 which were dismissed in part and sustained in part by a Decision of the Honorable Lawrence E. Kahn dated September 30, 2013; and

WHEREAS, pursuant to this Agreement the parties have resolved any and all claims that were the subject of the Federal Litigation and the State Litigation, which proceeding is being stayed pursuant to the Stipulation and Order of the Hon. Robert J. Muller, J.S.C. pending the determination of the Federal Litigation;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound the parties agree as follows:

1. Stipulation of Dismissal with Prejudice. Contemporaneous with the execution of this Agreement, the parties will execute a Stipulation of Dismissal with Prejudice and Without Costs, with prejudice in the form annexed hereto as Exhibit "A" ("Stipulation"), which dismisses

the Federal Litigation, and in the form annexed as Exhibit "B", which dismisses the State Litigation.

2. No Admission of Liability. This Agreement does not constitute an admission by the parties of any violation of any federal, state or local law, regulation, or local requirement, contractual obligation or of any duty whatsoever, whether based in statute, regulation, common law, or otherwise, and the parties expressly deny that any liability or any such violation has occurred.

3. Settlement Terms and Consideration to Plaintiff.

a. The City shall amend Section 270-26 of the City of Plattsburgh Code to conform the Code with the issues identified by the Decision of the United State District Court dated September 20, 2013.

b. The City agrees that the digital sign that is currently displayed at 178 Broad Street, Plattsburgh, New York shall be exempted from the past, present and any future City Code and be for all purposes grandfathered. Moreover, the City agrees that under this agreement, Plaintiff and for purposes of this agreement the term Plaintiff shall be deemed to include any successors or assigns in interest, is permitted to have, own and display a digital, (for purposes of this agreement all references to "digital" shall be deemed to include but not be limited to LED, animated, illuminated or like sign as the industry may evolve and to be construed broadly) sign which does not exceed 150 sq feet (said 150 sq feet shall include a measurement based on length and width only with no consideration or deduction for depth being included in the calculation). The depth of the sign shall be without restriction as originally determined allowable by the Code Enforcement Officer under the former Code section 260-26(F) (2). Said sign ~~may be free standing,~~ shall be a building sign attached to a structure, ~~or positioned otherwise on the property~~

and display messages without any limitations as to form and/or content to include but not be limited to the form and/or content of messages for goods and/or services that are not sold, offered or delivered on the premises at 178 Broad Street, Plattsburgh, New York.

c. The City (which shall in this agreement be construed to mean all departments and all related Boards including but not limited to the Zoning Board of Appeals) agrees that it shall not interfere with the use or enjoyment of Plaintiff's digital sign and Plaintiff is permitted to repair, modify and/or replace the existing or upgrade to a same or an enlarged digital sign as many times as needed or desired, without limitation or necessity of going through a permit process as long as Plaintiff or Plaintiff's successor provides written notice to the City of the exercise of its rights herein. This provision is intended to be construed broadly to protect the Plaintiff's free use of signage and to protect Plaintiff against interference from the Defendant. Additionally any lighting, cameras or other items relevant or related to running the sign used in connection with the signage shall not be included in the signage square foot calculation and shall be permitted and allowed as part of this agreement and exempted as well from the past, present or future City Code and the necessity of going through a permit process.

d. The City agrees that the digital sign at 178 Broad Street Plattsburgh, New York shall not be governed by the size or contents provisions of any past, present or future Code and only by the terms of this agreement. However consistent with other digital signs in the City, Plaintiff may change the displayed information no less than every eight (8) seconds. In the event the city should enact provisions or allow variances to others which provide for shorter time changes or larger signage entitlements then the Plaintiff shall be allowed to adopt, utilize and operate under those better more favorable standards as part of this agreement without further need of process or permit application.

e. The City also consents to the restoration of the non digital signage on the front and sides of 178 Broad Street, Plattsburgh, New York which displayed the name of the Cantwell Law Firm in the same or smaller size than was previously displayed on the premises before March 30, 2011. The signage letters previously used on the property are maintained by Plaintiff and are available for inspection by Defendants upon request.

f. The signage, digital and otherwise, shall comply with State and Federal Rules and Regulations, if any.

g. In addition to the above relief, Plaintiff shall be paid within 20 days of the Stipulation of Discontinuance the sum of ~~\$15~~9,000 for legal fees and costs related to the initiation and prosecution of this civil rights action, which the parties agree is a compromised amount agreed to by all parties after negotiation. If Plaintiff is required to commence an action to enforce Plaintiff's rights under this stipulation, Defendant City of Plattsburgh, New York shall be responsible for Plaintiff's costs and reasonable attorneys fees necessary to obtain a favorable verdict or settlement of its claims.

4. General Release. In consideration of the mutual benefits and promises described herein and for other good and valuable consideration, the sufficiency of which the parties hereby acknowledge: a) Plaintiff hereby releases and forever discharges the City of Plattsburgh and its officers, agents and employees (herein collectively the "Defendant Releasees"), from any and all claims and causes of action (except for the obligations specifically set forth in this Agreement) arising out of or related to the enactment of the May 2, 2011 moratorium on the installation of digital signs and the November 1, 2011 amendment to the Code of the City of Plattsburgh to regulate digital signs and the Notice of Violation dated July 20, 2012 relating to the digital sign installed by Plaintiff at 178 Board Street,

Plattsburgh, New York. b) Defendant hereby releases and forever discharges Adirondack Advertising, LLC and its officers, agents and employees (herein collectively the “Plaintiff Releasees”), from any and all claims and causes of action (except for the obligations specifically set forth in this Agreement) arising out of or related to the placement and installation of a sign at 178 Broad Street, Plattsburgh, NY including but not limited to any alleged violations or citations of the City of Plattsburgh Code and any fines related thereto.

5. Entire Agreement. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior oral and written agreements between them. This Agreement may not be altered, amended or modified except by a further writing signed by the parties.

6. Strict Adherence. The failure of the parties to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of the Agreement.

7. Severability. If any of the provisions, terms, or clauses, of this Agreement are declared illegal, unenforceable or ineffective by an authority of competent jurisdiction, those provisions, terms and clauses shall be deemed severable, such that all other provisions, terms and clauses of this Agreement shall remain valid and binding upon both parties.

8. No Waiver of Breach. The waiver of any provision of this Agreement shall not be construed or operate as a waiver of any subsequent breach.

9. Choice of Law and Venue. The validity and construction of this Agreement shall be governed by the laws of the State of New York. The parties agree that any dispute concerning the enforcement or interpretation of this Agreement shall be tried in the U.S. District Court for

the Northern District of New York and the federal court shall be deemed to have retained and have continuing jurisdiction over all claims including State Law claims for purposes of enforcement or interpretation of this agreement.

10. Enforceability of Agreement. The City agrees that enforceability of this Agreement is material to Plaintiff's agreement to withdraw its Federal and State Litigations.

IN WITNESS WHEREOF, the parties hereto, have duly executed this Agreement on the date first hereinabove written.

ADIRONDACK ADVERTISING, LLC

By: _____
LORI CANTWELL, MEMBER

DATE: _____

CITY OF PLATTSBURGH

By: _____
JAMES CALNON, as MAYOR with full authority
by majority votes of the Plattsburgh City Council
and Plattsburgh City Zoning Board of Appeals

DATE: _____

SO ORDERED:

Judge Lawrence E. Kahn, U.S.D.J.